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Supreme Court of the United States

October Term, 1974
No. 74-936

EDWARD C. VOLL,
Petitioner,

vs.

DENNIS SHAUL, DIRECTOR OF COMMERCE,
DIVISION OF LICENSING,
STATE OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH APPELLATE DISTRICT OF OHIO

REPLY BRIEF OF PETITIONER

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I. NO FAIR AND IMPARTIAL HEARING

What Was the Purpose of the Adversary Hearings

It was to determine whether or not the Petitioner had been convicted of a felony and to take and weigh evidence offered so that a fair and proper penalty could be imposed.

In the case of *Department of Liquor Control v. Santucci* (1969), 17 Ohio St. 2d 69, 70-71, 246 N.E.2d 549, the highest court in Ohio has held that in the *absence of evidence offered in mitigation of penalty* the stipulation by a licenseholder that he had been convicted of a felony is substantial, reliable and probative evidence to support an adjudication order. However, any evidence offered in mitigation of penalty would be for the consideration of the tribunal.

In the instant case extensive evidence was offered by Petitioner in mitigation of penalty. Both the hearing officer and the Common Pleas Judge on appeal were moved by said evidence.

What was legally due and denied Petitioner? A fair and unbiased hearing which was impossible under the procedure established by O.R.C. 119.09.

II. VOID PUNISHMENT

It is true that the statutory law of Ohio does set forth penalties, three in number, one of which, after a hearing and based upon evidence *may* be enforced against the felon licenseholder by the agency.

Respondent, Dennis Shaul, states that he has authority as a matter of law to enforce his preconceived arbitrary penalty against Petitioner at his discretion since Petitioner stipulated his conviction to a felony at the hearings. If this were true then what was the purpose of the evidence offered in mitigation of penalty at the hearings?

What was legally due and denied Petitioner? A fair penalty based upon the evidence which was impossible under the procedure established by O.R.C. 119.09.

III. DOUBLE PUNISHMENT

Clearly the State of Ohio in the instant case has ordered a double penalty against Petitioner. A double penalty for the same wrong in the same case is contrary to the very foundation of American Jurisprudence.

The first penalty admittedly was for the protection of the public. What was the purpose and nature of the second penalty? Is the second penalty revoking Petitioner's license for life a civil penalty, criminal penalty or just an illegal penalty? If it is a civil penalty then the civil rule of estoppel should apply. If it is a criminal penalty then the rule against double jeopardy should apply. If the penalty is just illegal then it should be null and void.

What was legally due and denied Petitioner? One penalty.

CONCLUSION

It is impossible under the procedure established by O.R.C. §119.09 for any person in Ohio to receive a fair and impartial administrative hearing. Said statute clearly commingles the function of the investigator, prosecutor, hearing officer, decision maker and punisher. The whole concept of American Jurisprudence is contrary to said procedure.

Petitioner has been denied by the State of Ohio "Due Process of Law," same being guaranteed to Petitioner by the Federal Constitution, Article XIV, Section I.

Petitioner respectfully moves that his petition for Writ of Certiorari be granted.

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